The Petitioners herein request a special exception to permit one illuminated 12' imes 25' advertising sign on the subject property in accordance with Petitioner's Exhibit 1.

The Petitioners, by Richard Kim, appeared, testified and was represented by Stuart R. Berger, Esquire. Also appearing on behalf of the Fetition was Barry Friedman, Penn Advertising of Baltimore, Inc. Appearing as Protestants in the matter were Jim Janas, Director, Liberty Communities Development Corporation, and Judith Berger with the Liberty Road Community Council and Lochearn Improvement Association. Phyllis Friedman appeared on behalf of the People's Council for Baltimore County.

Testimony indicated that the subject property, known as 7028 Liberty Road, zoned B.R., is improved with a liquor store and a Fotomat. Petitioners are desirous of leasing a portion of the property to Penn Advertising of Baltimore, Inc. for purposes of erecting an advertising sign in the location shown on Petitioner's Exhibit 1.

On preliminary motion, People's Counsel questioned whether Petitioners had satisfied the requirements of Section 500.12 of the Baltimore County Zoning Regulations (B.C.Z.R.) which prohibits the refiling of a previously denied special exception within 18 months of the date of the final order relating to the same issue and property. The matter was taken under advisement and Counsel was afforded the opportunity to submit author-

ity subsequent to the hearing relative to the Section 500.12 issue. After both sides were heard on the preliminary motion, the case was tried on the

Based upon a reading of the applicable case law, it is apparent that the Petitioners did, in fact, prematurely file the instant special exception request, and therefore, the requested relief must be dismissed. Section 500.12 of the B.C.Z.R. reads as follows:

> "If a zoning reclassification or special exception petition has been denied, the Zoning Commissioner may not accept for filing any other zoning reclassification or special exception with respect to the same property or any part of that property until at least eighteen months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Zoning Commissioner or Deputy Zoning Commissioner, by the Board of Appeals, or by a Court of competent jurisdiction considering the petition on

For purposes of Section 500.12, the order of the Circuit Court by Judge Buchanan dated October 5, 1989, was the "final order" by a "Court of competent jurisdiction", and therefore, the 18-month date of accounting should begin October 5, 1989.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the relief requested in the special exception should be dismissed.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of October, 1990 that the Petition for Special Exception to permit one illuminated 12' x 25' advertising sign on the subject property, in accordance with Petitioner's Exhibit 1, shall be DISMISSED without prejudice.

Usoning Commissioner for Baltimore County

90-505-X

TRH:bjs

PRICR CASE EE-4ET.

My adrice I gene on this was considered and usected in a pleasant but definite inauner

SPX FOR cutohor advertising eign ma BR your. Told him net Sermitted in BR and Mobile cited a diacin or opinion given by Judge John Raines in 1983, calling the BR gene for the use which he will argue at the heaving

notified Michaele that the is in The Selecty Rol. action Plan area (which deals with ayon on the Salinty Rd. and )+ that the squiement innest also be met Current Blanking has been involved with imprement)

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@ Plans have No Seals. Trouders statement was that there were it The sign heatin won a settack (cliente the angle of perpenty

line ) which wolfast allow a principal blody to be located the close to street Auline (Interpretation of S. 413. 3) Paling with a general lack of 413, 3 regumenants

(E) And a general lack of most commerce felichlist information and complete sign delails, observains, highly, area and so firth et cetra -----

De Sam Dor Carlon this one Smooth filing and they felt that since he was insection that he could file with these careato:

Place aspies of correspondence - DAD: 4/17/90.

Order well-old in # 315 fele.

Baltimore County Zoning Commissioner Office of Planning & Joning Towson, Maryland 21204 (301) 887-3353 J. Robert Haines

Joning Commissione:

October 23, 1990 Dennis F. Rasmussen

Baltimore, Maryland 21201 RE: PETITION FOR SPECIAL EXCEPTION N/S Liberty Road, 436' SE of Essex Road (7028 Liberty Road) 2nd Election District - 2nd Councilmanic District Richard Kim, et ux - Petitioners Case No. 90-505-X

Dear Mr. Berger:

Stuart R. Berger, Esquire

Weinberg and Green

100 S. Charles Street

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Exception has been dismissed without prejudice in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

> J. ROBERT HAINES Zoning Commissioner for Baltimore County

> > receipi

Very truly yours,

cc: People's Counsel

File

Zoning Commissioner
County Office Building
111 West Chrsopeake Avenue
Touron, Maryland 21204

**科学0000365** PUBLIC HEARING FIES 050 - SPECIAL EXCLUSION TOTAL: \$175.00 LAST NAME OF OURGON KITT

> B 160\*\*\*\*\*17500:a 4186F Please make checks payable to: Baltimore County

## CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of \_\_\_\_ successive 

THE JEFFERSONIAN,

PETITION FOR SPECIAL EXCEPTION TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-505-The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for \_one\_(1)\_illuminated\_12'\_X\_25'\_advertising\_(sign)\_\_\_\_\_ Property is to be posted and advertised as prescribed by Zoning Regulations. If, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County. I'We do solemnly declare and affirm. under the penalties of perjury, that I we are the legal owner(s) of the property which is the subject of this Petition. Contract Axerxhaserx Lessee: Legal Owner(s): Penn Advertising of Faltimore, Inc. <u>Richard Kim</u> (Type or Print Name) 3001 Remington Avenue (Type or Print Name) Baltimore, Maryland 21211 200 City and State Attorney for Petitioner: 1204 <u>Dulaney Woods Road</u> ()(, Surgereockeysville, Maryland 21030 Weinberg and Green 100 S. Charles Street Name, address and phone number of legal owner, contract purchaser or representative to be contacted Baltimore, Maryland 21201 City and State Attorney's Telephone No.: \_(301)\_332-8600\_\_\_\_ ORDERED By The Zoning Commissioner of Baltimore County, this of \_\_\_\_\_, 19 96, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning FRED ON 4/11/90 BY ULL (Q 5/195)

ORDER RECEIVED FOR FILING

Z.C.O.—No. 1

District 2 22	d. Lanciel G	C. Office	Date of Posting	1990
Petitioner:	Michard Min	e et al		
Location of prope	rty: 1/15 dilection	Road 434' S	15 of Gos. H. Port	
	Liberty Road		<i>L</i> (1)	·
Location of Signa	- Su frent of	.7229 I.Com	<u>a Xord</u> J	·
Remarks:		***************************************		
Posted by	Signatura	Date	of return: 25132-15 15	492
fumber of Signi	er /		$\mathcal{U}$	

COUPLE wishes to adopt infant. Will pay legal and medical expenses. Please call Cathy and Jim collect at 1-301-916 2849.	BALTIMORE COUNTY ZONING COMMISSIONER OFFICE OF PLANNING & ZONING TOWSON, MARYLAND 21204	PROJECT CLASSIFICATION—B Cleaning and Painting portions of ex bridges in Dist #1, 2 & 4.  A "Pre-bidding information Conference be conducted at 10 00 a m on June 15, 11 the S H A Building, 707 N Calvert St. Rn Baltimore, Md. 21202 Minimum wage rates for this project been predetermined as required by law at
NEW OFFICE SPACE— Reisterstown, elevator-served. 484-6900.	in Room 106 of the County Office Business	set forth in the invitation for Bids Bids must be made upon the blank pri form which, with specifications and plat be furnished by the Administration upon cation and cash payment noted NO RE FOR RETURN OF SPECIFICATIONS PLANS, Plans may be purchased fro Cashier's Office, 707 N. Calvert Street Bal
Available Immediately Newly carpeted & painted, 2 BR, 2 ba. condo in Pikes- ville w/CAC, FP & all appl., inct. W/D. Quiet park-like area w/plenty of parking. No pets. \$675. 366-1693 or 788-8192	Towson, Maryland 21204 as follows Petrition for Special Exception CASE NUMBER 90-505-X N'S Liberty Road, 456 SE of Essex Road 7028 Liberty Road, 456 SE of Essex Road 7028 Liberty Road 2nd Electron District—2nd Councilmanic Legal Owner, Richard Kim, et us Contract Purchaser: Penn Advertising of Battimore, inc. HEARING Thursday, July 5, 1990 at 2 00 p.m. Special Exception One Huminated 12 h. is 25 It, advertising sign structure In the event that this Petition is granted, a building permit may be issued within thirty (30) day appeal period. The Zoning Commissioner with however, entertain any request for a stay of the issuance of said permit during this period.	Maryland 21203 in accordance with Article 21 Section 3 the Annotated Code of Maryland, it performance or payment bonds are req- bids less than \$50,000.00. Howeve \$50,000.00 and above will not be con- unless accompanied by a Certified C Cashier's Check or Treasurer's Check upon a bank or a Bid Bond payable to the Maryland, or Cash, or Trust Acco- piedge of United States backed Secu- State of Maryland Bonds, Special pro- for submitting cash are outlined in 21,06.07. Bid Security shall equal at least 5 (5%) of the toal amount bid Also, the su- bidder with be required to supply Payri
OWNER'S SALE	for good cause shown. Such request writing and received in this office by the date of the hearing set above or presented at the hearing.	Performance Bonds for all Contracts in of \$50,000,000. The Administration reserves the right any and all bids.
HOUSE FOR SALE—Sem detached, CAC, new roof & kitche Nice area, 655-5426.	J ROBERT HAINES Zoning Commissioner Baitimore County	any and an outs.  Ha Adm  ORDER NO E-8059
FOR SALE	FOR SALE	DATE May

equally discounted pools.

\$868 SWIMMING POOL \$868 Due to the rainy season, we are overstocked with 24' × 32' pools. Includes huge deck with fencing, filter, ladders & skimmer, etc. Financing & installation available. Ask about our other

Wholesale Pool Dist., Corp. ● MHIC #3259-01

REAL ESTATE REPOSSESSED VA A HUD HOMES Available from government from \$1, \$70 repair. No credit check Also drug seizures and IRS foreclosures sold for back taxes. Call 1-905-682-7555, ext. H-2072 for repolicity our F168 (call 7 days a seek) Call toll-free 24 hours • 1-800-523-0460

PC104672

PROPERTY DESCRIPTION- 7028 LIBERTY ROAD BEGINNING AT A POINT LOCATED ON THE NORTH SIDE OF LIBERTY ROAD (80 FEET WIDE), 436 FEET FROM THE CENTERLINE OF ESSEX ROAD (50 FEET WIDE) AND 76 FEET FROM THE CENTERLINE OF LIBERTY ROAD AND THENCE RUNNING THE

FOLLOWING COURSES AND DISTANCES: 1) NORTHERLY A DISTANCE OF 30 FEET TO A POINT, THENCE 2) EASTERLY AND AT A RIGHT ANGLE A DISTANCE OF 10 FEET TO A POINT, THENCE 3) SOUTHERLY AND AT A RIGHT ANGLE A DISTANCE OF

30 FEET TO A POINT, THENCE 4) WESTERLY AND AT A RIGHT ANGLE A DISTANCE OF 10 FEET TO THE BEGINNING.

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 (301) 887-3353

DATE COLLE

Penn Advertising of Baltimore, Inc.

Dennis F. Rasmussen County Executive

Baltimore, Maryland 21211 Petition for Special Exception CASE NUMBWER: 90-505-X N/S Liberty Road, 436' SE of Essex Road 7028 Liberty Road 2nd Election District – 2nd Councilmanic

Legal Owner: Richard Kim, et ux Contract Purchaser: Penn Advertising of Baltimore, Inc.
HEARING: THURSDAY, AUGUST 2, 1990 at 10:30 a.m.

Gentlemen:

J. Robert Haines

Zoning Commissioner

3001 Remington Avenue

Please be advised that  $\frac{95.75}{}$  is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & PUST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE URDER SHALL NOT ISSUE.

DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there will be an additional \$50.00 added to the above amount for each such set not returned.

ZONING COMMISSIONER

Stuart R. Berger, Esq.

Baltimore County

Zoning Commission

County Office Building Zoning Commisioner County Office Building 11 West Chesapeake Avenue Towson, Maryland 21204

Cashier Validation:

dean

PUBLIC MEARING FEES

LAST MAME OF DUNER: KIM

Account: R-001-6150 Number

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080 FORTING SIGNS / ADVERTISING 1 X (95.70) 10月1日 金95、70

> gia04#008amICHKC 405.70

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Baltimore Count Zoning Commissione. Zoning Commisioner County Office Building 111 West Chesapeake Avenue owson, Maryland 21204

Account: R-001-6150

fqieoon

04A0440091570NRE Please Make Checks Payable To: Baltimore County) 02:23/h01-09-91 NEXT BUSINESS DAY Baltimore County Zoning Office 111 West Chesapeake Avenue, Room 113 Baltimore, Maryland 21204

CHARLES B HEYMAN

WILLIAM H ENGELMAN

MERBERT J BELGRAD

EDWARD F SHEA, UR

THECOORE'S MILLER

ABRAHAM L AULER

SEARLE E MITN CK

KENNETH P NIMAN

DANIELS KATZ

MICHAEL D BERMAN

STEVEN R FREEMAN

JOHN PHILIP MILLER LOWELL G HERMAN

WILLIAM D. SHAUGHNESSY, JR

Dear Sir:

CBH:rb

Enclosure

STANLEY S FINE

On behalf of Penn Advertising, Inc. and the hearing for Special Exception referred to above, enclosed please find our check in the amount of \$15.00 to cover the cost of having the tape of the hearing copied for our use.

RE: Special Exception Case No. 90-505-X

Please call this office when the tape is ready, at your earliest convenience and we will make arrangements to have it picked up.

LAW OFFICES

KAPLAN, HEYMAN, GREENBERG, ENGELMAN & BELGRAD, P.A.

TENTH FLOOR-SUN LIFE BUILDING

20 SOUTH CHARLES STREET

BALTIMORE, MARYLAND 21201

(30)) 539-6967

TELECOFIER

(30 | 752 0685

January 3, 1990

Thank you in advance for your prompt and kind attention to this matter.

Sincerely,

Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 (301) 887-3353 J. Robert Haines Zoning Commissioner

June 19, 1990



NOTICE OF REASSIGNMENT

90-505-X CASE NUMBER(S): PETITIONER(S):

Richard Kim/Penn Advertising of Baltimore, Inc. 7028 Liberty Road

THE ABOVE MATTER HAS BEEN REASSIGNED. THE HEARING WILL NOW TAKE PLACE AS FOLLOWS:

THURSDAY, AUGUST 2, 1990 at 10:30 a.m.

IN THE BALTIMORE COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE, ROOM 106, TOWSON, MARYLAND 21204.

J. ROBERT HAINES ZONING COMMISSIONER BALTIMORE COUNTY

cc: Penn Advertising of Baltimore, Inc. Stuart R. Berger, Esq.

CC: JIM JANAS, LCDC on 7/3/90/

#90-425-5PHA

Baltimore County Planning Board Towson, Maryland 21204 (301) 887-3211

#90-426-5PHA

Dennis F. Rasmussen
DATE: April 24, 1990 County Executive

J. Robert Haines TO: Zoning Commissioner

P. David Fields, Secretary FROM: To The Planning Board

Amended Final Development Plans -SUBJECT: "Patapsco Woods"

Pursuant to Section 1801.3A.7.b.i of the Baltimore County Zoning Regulations, the proposed amendments to the Final Development Plans of "Patapsco Woods" (Third Amended Plan of Phase I, Section 3; Second Amended Plan of Phase II, Section 5; Second Amended Plan of Phase II, Sections 6, 7, 8) were approved by the Baltimore County Planning Board at its meeting on April 19, 1990 and may now proceed to the special exception hearing.

PDF/TD/prh

cc: Frank Fisher Robert A. Hoffman, Esquire

Jeddy ; 16 PA

**以得取,即於** 

RECEIVED APR 2 7 1991

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 (301) 887-3353 J. Robert Haines Zoning Commissioner

Cashler Validation

May 21, 1990



NOTICE OF HEARING

Dennis F. Rasmussen

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Exception CASE NUMBWER: 90-505-X N/S Liberty Road, 436' SE of Essex Road 7028 Liberty Road 2nd Election District - 2nd Councilmanic Legal Owner: Richard Kim, et ux Contract Purchaser: Penn Advertising of Baltimore, Inc. HEARING: THURSDAY, JULY 5, 1990 at 2:00 p.m.

Special Exception: One illuminated 12 ft.  $\times$  25 ft. advertising sign structure.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

Baltimore County

Mr. & Mrs. Kim Penn Advertising of Baltimore, Inc. Stuart R. Berger, Esq.

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 (301) 887-3353 J. Robert Haines Zoning Commissioner

June 22, 1990

Stuart R. Berger, Esquire Weinberg and Green 100 S. Charles Street Baltimore, MD 21201

SOLOMON KAPLAN

9-6 (986

SRAL A MILTON

HALFE F WEINSTEIN

AMY J SEIFERT

RE: Item No. 365, Case No. 90-505-A Petitioner: Richard Kim, et ux Petition for Special Exception

Dear Mr. Berger:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

> Very truly yours, JÁMES E. DYER Chairman Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. & Mrs. Richard Kim Penn Advertising of Baltimore, Inc.

Baltimore County Zoning Commissioner Office of Fanning & Zoning Towson, Maryland 21204 (301) 887-3353

J. Robert Haines



Your petition has been received and accepted for filing this 9th day of May, 1990.

> J. ROBERT HAINES ZONING COMMISSIONER

Received By:

Zoning Plans Advisory Committee

Petitioner: Richard Kim, et ux Petitioner's Attorney: Stuart R. Berger



Maryland Department of Transportation State Highway Administration

Richard H. Trainor Secretary Hal Kassoff Administrator

May 3, 1990

Mr. J. Robert Haines Zoning Commissioner County Office Building Towson, Maryland 21204 Att: James Dyer

RE: Baltimore County Richard Kim Property Zoning meeting 5/8/90 N/S Liberty Road MD 26

436' east of Essex Road 7028 Liberty Road Item # 365

Dear Mr. Haines:

After reviewing the submittal for a special exception for one illuminated 12' by 25' advertising (sign) structure, we have forwarded this plan to our Highway Beautification Section c/o George Dawson (333-1642) for all comments relative to zoning.

Very truly yours,

Charles Rom

Charles Rose, Acting Chief Engineering Access Permits Division

LB/es

cc: Mr. J. Ogle Mr. George Dawson w/att.

> MAY G 1000 ZUPANE LEFTE

333-1350 My telephone number is (301)

Teletypewriter for Impaired Hearing or Speech 383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free 707 North Calvert St., Baltimore, Maryland 21203-0717

BALTIMORE COUNTY, MARYLAND INTEROFFICE CORRESPONDENCE

TO: Zoning Advisory Committee PATE: May 11, 1990

The Developers Engineering Division has reviewed

For Items 367, the previous County Review Group Comments

Developers Engineering D(v)sion

the subject revised zoning items and we have no comments

for Items 332, 333, 354, 362, 363, 365, 369 and 370.

For Item 359, 2-foot setback for parking is

For Item 366, the correct plat reference is

For Items 371 and 372, no plans were received

For 89-483A, we have no comment

inadequate for vehicle overhand against State Highway

For Item 364, the address on the plat is #9400 for

Zoning Advisory Committee Meeting

FROM: Robert W. Bowling, P.E.

for May 8, 1990

still apply.

Lot 53.

RWB:s

SM 56/138.

Administration fence.

for review and comment.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

J. Robert Haines Zoning Commissioner

DATE: June 11, 1990

Pat Keller, Deputy Director Office of Planning and Zoning

Richard Kim, et ux, SUBJECT: Penn Advertising of Baltimore, Inc., Item No. 365

The Petitioners request a special exception for an outdoor advertising structure.

In reference to this request, staff offers the following

 This area is presently covered by the existing Liberty Road Action Plan as adopted in 1980. The Liberty Road Action Plan places limitations on the size of ground signs along Liberty Road (see attachment). The Petitioners' request for a 12' X 25' sign exceeds the requirements of the Liberty Road Action Plan.

2. This area is within the current study boundaries of the Woodlawn/Liberty Community Plan. One of the purposes of the current plan is to improve both the physical and perceived image of the community. As such, this office is in the process of preparing design guidelines and standards for properties within the study area.

3. According to a memo from the Zoning Commissioner dated February 2, 1990, a variance or special exception may be denied if it is viewed as detrimental to the community plan.

Based on the above comments, the planner for this area recommends that this petition should be denied.

If there should be any further questions or if this office can provide additional information, please contact Chris Rorke at 887-3211.

PK/JL/cmm

comments:

Baltimore County Department of Public Works Bureau of Traffic Engineering Courts Building, Suite 405 Towson, Maryland 21204 (301) 887-3554

May 24, 1990

Dennis F. Rasmussen
County Executive

Mr. J. Robert Haines Zoning Commissioner County Office Building Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 332, 333, 354, 359, 362, 363, 364, 365, 366, 367, 369, 370, 371, and 372.

> Very truly yours, Michael S. Flanigan Traffic Engineer Associate II

MSF/lvw

TIMEN'S IN

Baltimore County Fire Department 700 East Joppa Road, Suite 901 Towson, Maryland 21204-5500 (301) 887-4500

Paul H. Reincke J. Robert Haines Zoning Commissioner Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204

Dennis F. Rasmussen

RICHARD KIM, ET UX RE: Property Owner: 7028 LIBERTY ROAD Location:

Item No.:

Zoning Agenda: MAY 8, 1990

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be

7. The Fire Prevention Bureau has no comments at this time.

corrected or incorporated into the final plans for the property.

REVIEWER: Cast Joseph Kell, 5-3-90 Approved Cast War B Brade in M. Fire Prevention Byreau Special Inspection Division

Baltimore County, Maryland

PEOPLE'S COUNSEL ROOM 304, COUNTY OFFICE BUILDING 111 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 887-**484:2188** 

August 7, 1990

AUG 8 1996

PHYLLIS COLE FRIEDMAN People's Counsel

> The Honorable J. Robert Haines Zoning Commissioner County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

RE: Richard Kim, et al., Petitioners Case No. 90-505-X

Dear Mr. Haines:

This is in response to the request by the Zoning Commissioner for a brief memorandum on the issue of what constitutes the "final order" in the previous "Kim" case, pursuant to Section 500.12 BCZR. People's Counsel originally suggested it was the date the Circuit Court issued its October 5, 1989 order reversing the Board of Appeals decision and holding it was divested of jurisdiction to rule on the decision of the Zoning Commissioner. After review of the regulation and the law, People's Counsel would add 30 days to that date, when the time for filing an appeal expired and the Court's Order was final.

The basic rule of finality is that an Order is final if it "concludes the rights of parties, or if it denies them means of further prosecuting or defending their rights and interests in the subject matter of the proceedings." Md. Comm'n on Human Rel. v. BG&E., 296 Md. 46, at 52 (1983). Since the regulation requires the order not only be a final administrative order, but final as to the highest body considering it, this is the appropriate standard to apply. Copies are attached of Section 500.12 BCZR, the final Order of Judge Buchanan dated October 5, 1989, and the Md. Human Relations case for your convenience.

Irrespective of the issues before the Board and the Court, the fact is that only after the time for appealing Judge Buchanan's decision expired was there no further means for any of the parties to further prosecute or defend their rights in the original petition. That date therefore is the date from which the 18 months should be counted before a new petition can be filed and the instant Petition is premature.

> Respectfully, Alylles Cole Fuedman Phyllis Cole Friedman People's Counsel for Baltimore County

Enclosures cc: Stuart R. Berger, Esquire WEINBERG AND GREEN ATTORNEYS AT LAW

100 SOUTH CHARLES STREET BALTIMORE, MARYLAND 21201-2773 (30) 332-8600 WASHINGTON AREA 470-7400

10480 LITTLE PATUKENT PARKWAY COLUMBIA, MARYLAND 21044-3506 WRITER'S DIRECT DIAL NUMBER

(301) 740-8500

FACSIMILES (301) 332-8662 (301) 332-8863 14 WEST PATRICK STREET

FREDERICK, MARYLAND 21701-5512

FILE NUMBER

(301) 695-9200

(301) 332-8662 August 31, 1990

The Honorable J. Robert Haines Zoning Commissioner of Baltimore County 111 West Chesapeake Avenue Room 109

ZONNIG GEFICE Towson, Maryland 21204 Re: In the matter of Richard Kim, et al. for a Petition for Special Exception

7028 Liberty Road Case No. 90-505-X

Dear Zoning Commissioner Haines:

Please accept this letter in response to Ms. Friedman's most recent letter to you dated August 24, 1990. Ms. Friedman alleges that the case I cited in my previous letter to you "is no longer good law and Mr. Berger's response is inapposite."

Please be advised that the case I cited in my previous letter to you dated August 10, 1990 (i.e. Tyrie v. Baltimore County, 215 Md. 135 (1957)) is still "good law." According to Sheppard's Maryland Citations (Volume 1, 1988), Tyrie has been cited fifteen (15) times by the Court of Appeals. The Tyrie case has also been cited by the United States District Court for the District of Maryland, the Court of Special Appeals, the Maryland Law Review and the third edition of the American Law Reports (ALR).

Indeed, Tyrie has been cited by both the Court of Appeals and the Court of Special Appeals after the County Council repealed and re-enacted Section 500.12 of the Baltimore County Zoning Regulations on March 6, 1978. In sum, Tyrie is still "good law," and clearly dispositive of the issue which you asked Ms. Friedman and I to address.

WEINBERG AND GREEN

The Honorable J. Robert Haines August 31, 1990 Page 2

If you would like me to address this matter further, I welcome that opportunity. Thank you for your consideration.

Very truly yours,

0610p/0366/raj

0366:08/01/90

RICHARD KIM, et al. FOR A PETITION FOR SPECIAL EXCEPTION 7028 Liberty Road Case No. 90-505-X

\* BEFORE THE \* ZONING COMMISSIONER \* FOR \* BALTIMORE COUNTY \* \* \* \* \* \* \* \* \* \* \*

PETITIONER'S MEMORANDUM

Introduction

Petitioner, Richard Kim and contract lessee, Penn Advertising of Baltimore, Inc., by their undersigned attorneys, submit this Memorandum in support of its petition for special exception.

Summary of the Case

On March 30, 1988, Petitioner filed a petition for special exception for one (1) illuminated 12' x 25' advertising (sign) structure located at 7028 Liberty Road in area zoned B.R. in Baltimore County, Maryland. On June 13, 1988, a hearing was held before Zoning Commissioner Haines regarding the petition for special exception. On October 10, 1988, Zoning Commissioner Haines denied the petition. See Findings of Facts and Conclusions of Law in Case No. 88-487-X. The basis of the Zoning Commissioner's denial of the petition for special exception was that the "current 1987 edition of the B.C.Z.R.... contains no reference to the B.R. zone [and] [c]learly, the regulations do not permit outdoor advertising signs in this zone."

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Thereafter, approximately two and a half weeks later (i.e. on October 27, 1988) representatives of the contract lessee, Penn Advertising of Baltimore, Inc., appeared for a hearing before Zoning Commissioner Haines regarding two separate and distinct petitions for special exceptions for outdoor advertising signs. Those cases, docketed as case nos. 89-77-X and 89-78-X both involved petitions for special exceptions for outdoor advertising signs in B.R. zones. At the hearing regarding 89-77-X and 89-78-X, the petitioner and contract lessee, by their representative, Stuart R. Berger, submitted a lengthy written memorandum detailing the decisions in two contested cases<sup>2</sup> that the earlier disseminated mimeographed version of Section 413.3 of the B.C.Z.R., which includes B.R. as a zone which a special exception could be granted, is the controlling law.

Thereafter, after review of Petitioner's Memorandum, on December 6, 1988, Zoning Commissioner Haines granted both of the requested petitions for special exceptions for outdoor

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> advertising in B.R. zones. Thus, as a result of the decisions by two judges of the Circuit Court for Baltimore County and two subsequent decisions by Zoning Commissioner Haines, 4 it is clear that the petitioner, if it satisfies the requirements of Sections 413.3 and 502.1 of the B.C.Z.R., is entitled to a special exception for an outdoor advertising sign in a B.R.

Accordingly, the contract lessee, Penn Advertising of Baltimore, Inc. and the petitioner herein elected to withdraw the appeal pending before the County Board of Appeals of Baltimore County in case no. 88-487-X. That decision was based, in part, on Zoning Commissioner Haines' subsequent decision in case nos. 89-77-X and 89-78-X granting petitions for special exceptions for outdoor advertising signs in areas zoned B.R. Nevertheless, despite the prior withdrawal of the appeal, the County Board of Appeals ordered "that the Zoning Commissioner's Order denying the requested special exception be AFFIRMED." The Order of the County Board of Appeals further provides, in pertinent part, that:

> The record will indicate that Petitioner's attorney contacted the Board Chairman on April 11, 1989 and indicated that he did not intend to pursue the petition and wished it withdrawn.

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> Nevertheless, as stated supra, on April 13, 1989, the County Board of Appeals affirmed the Zoning Commissioner's denial of the Special Exception.

As a result of the error committed by the County Board of Appeals, the petitioner and contract lessee appealed the decision to the Circuit Court for Baltimore County. The Circuit Court, per the honorable William R. Buchanan, Sr. held

> The Order of the County Board of Appeals for Baltimore County dated April 13, 1989 is Reversed. The appeal pending before the County Board of Appeals of Baltimore County (CBA) was dismissed prior to the April 12, 1989 hearing date. Therefore, the CBA was divested of jurisdiction to rule on the decision of the Zoning Commissioner. The order of the CBA in affirming the decision of the Zoning Commissioner was in error.

Thereafter, on February 16, 1990, Zoning Commissioner Haines drafted a letter to Barry Freedman of Penn Advertising advising him that the only way to have this matter reheard "would be to file another Petition requesting new relief." Subsequently, a new Petition for Special Exception was filed, and the petitioners respectfully request that a petition for special exception be granted for one single-faced outdoor advertising sign at 7028 Liberty Road.

BACKGROUND

In an effort to explain the basis for the petitioner's position that outdoor advertising signs are

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permitted in B.R. zones, the petitioners endeavor to provide a brief background of the decisions issued by the Circuit Court for Baltimore County pertaining to the issue at bar, i.e. the validity of petitioning for a special exception for an outdoor advertising sign in a B.R. zone.

On July 1, 1981, the Circuit Court of Baltimore County, per Raine, J., issued a clear opinion of Metromedia, Inc. v. Baltimore County, Eq. No. 103167. A copy of Judge Raine's Opinion in Metromedia is attached hereto as Exhibit A and incorporated herein by this reference. The Circuit Court for Baltimore County declared that applications for special exceptions for outdoor advertising signs, under Section 413.3 of the County's Zoning Regulations, must be determined under the provisions published in the regulations as printed in 1957 and 1963. The 1975 Gold Book version of Section 413 was found inapplicable. Further, the Circuit Court for Baltimore County, in declaring what law applied pursuant to Maryland's Declaratory Judgment Act, 5 reasoned that amendments to the zoning regulations had to adhere to Section 22-21 and 22-22 of the County Code, which requires notice and hearing prefatory to amendment. Because no notice or hearings preceded the Gold Book amendment at bar in Metromedia, the publications of 1957 and 1963 -- long thereafter applied in the County -- were

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declared binding. Despite Metromedia, within months of that clear declaration, the County merely republished Section 413 in the same fashion declared fouled in Metromedia.

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The core -- and unusual -- issue at bar in these cases is whether, when promulgating its current edition of the zoning regulations which leaves out of Section 413.3 the B.R. (Business Roadside) zone, the Zoning Commissioner can ignore the Circuit Court for Baltimore County's ruling in Metromedia. Inc. v. Baltimore County, Eq. No. 103167 and Sections 22-21 and 22-22(a) of the Baltimore County Code. These cases, therefore, require the Commissioner to determine what "version" of Section 413.3 is applicable to outdoor advertising signs petitioned for by the Petitioner and contract lessee. In order to assist this Court in understanding the issue(s) presented, the Petitioners set out, in pertinent part, the Opinion of Judge Raine in Metromedia and the two relevant sections of the County Code.

> EXCERPT FROM METROMEDIA V. BALTIMORE COUNTY. EQUITY NO. 103167

In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted by the County Commissioners of Baltimore County on March 30, 1955. In 1957, and in 1963, the County republished this same version of the "Black" and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

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In 1969, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a value, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the Gold Books without notice or hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue

The Plaintiff cried foul: The County is changing the rules in the middle of the game. The Plaintiff contends that the County, by repeated publication, abandoned any adherence to the Soft Book and that its long adherence to and dissemination of the old Section 413 constituted a de facto ratification of the mimeographed version of the 1955 zoning regulations. In support of this contention the Plaintiff cites Pease v. Peck, 16 How. (59 US), 595 (1855) which holds that the government's long acquiescence to a law which it has promulgated constitutes a ratification of that law, even though the promulgated version differs from the original text.

mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

The consistent versions of Section 413 in the early

This Court will declare that the Defendant must accept application for special exceptions submitted by the Plaintiff and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1963. This ruling is applicable only to Section 413 and to no other regulations. [Issued July 1, 1981, by Raine, J.]

EXCERPTS FROM BALTIMORE COUNTY CODE

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Sec. 22-21. Preparation of zoning regulations and zoning

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(a) The planning board shall from time to time recommend to the county council for adoption, zoning egulations and zoning maps, showing the boundaries of the proposed districts, divisions or zones into which the county is divided pursuant to this title.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations .... All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in accordance with the same procedure herein specified for the original adoption of such regulations and maps ....

(c) After such zoning regulations and zoning maps have been approved by the planning board, it shall release a preliminary report thereon. Thereafter, and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation in the county, the planning board shall hold one (1) or more public hearings on the proposed zoning maps. The board may hold one (1) or more public hearings on the proposed regulations or on matters referred to the board by the county council, unless required to hold such hearings by resolution of the county council adopted pursuant to section 22-7. During the period of such notice, the preliminary report of the planning board, with accompanying maps and exhibits, if any, shall be available for public inspection in the county office building. After such hearing or hearing have been held, the director of planning shall submit to the county council a report containing the final recommendations of the planning board with regard to the proposed zoning regulations, or maps, as the case may be; and, in the case of zoning maps, a copy of the final map as approved by the planning board shall be attached to such report. In the event of any disagreement among the members of the planning board as to any part of the proposed zoning map or regulations, the dissenting member or members shall be entitled to file with the county council one (1) or more minority reports stating the basis for their disagreement with the majority, which shall be included with the final report of the majority.

Sec. 22-22.

Action by county council on adoption of zoning regulations and Zoning maps.

(a) After the county council has received a final report of the planning board recommending adoption of

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- 6 <del>-</del>

<sup>1</sup> Case No. 89-77-X involved a petition for special exception for one double faced illuminated 12' x 25' outdoor advertising sign in an area zoned B.R. Similarly, Case No. 89-78-X involved a petition for special exception for one single and one double faced illuminated 12' x 25' outdoor advertising sign in areas zoned B.R. and M.L.

See Metromedia, Inc. v. Baltimore County, Eq. No. 103167 (Reine, J.) and In the Matter of the Application of Euclay Realty for a Special Exception, Circuit Court for Baltimore County Case No. 21135184CG435, discussed infra.

<sup>3</sup> See Footnote 2, supra.

See Findings of Facts and Conclusions of Law in case nos. 89-77-X and 89-78-X.

<sup>5 &</sup>lt;u>See</u> §§ 3-402, 306, 3-411, Courts Article, Md. Code.

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any zoning regulations or zoning maps, the county council shall hold one or more public hearings thereon, giving at least twenty (20) days' notice thereof in at least two (2) newspapers of general circulation in the county. During such twenty (2) day period, the final report of the planning board with accompanying ... maps and supporting exhibits, if any, together with any minority report and maps from any dissenting members of the planning board shall be available for inspection at the office of planning and zoning, in each councilmanic district and at such other public place as the county council may designate for public inspection. After the expiration of such period of notice, and following the public hearing or hearings, the county council may by ordinance adopt such regulations or maps, subject, however, to such changes or amendments therein as the county council may deem appropriate, but subject to the provision of Section 22-21(e).

<u>QUESTION PRESENTED</u>
After the Circuit Court for Baltimore County

declared, in <u>Metromedia v. Baltimore County</u>, Equity No.

103167, what was the effective version of Section 413 of the
Baltimore County Zoning Regulations, may the Zoning

Commissioner ignore the decision, and permit the County to
republish a different version of Section 413, so that outdoor
advertising signs may not be granted as a Special Exception in
a B.R. zone?

## ARGUMENT

What <u>Metromedia</u> Declared.

The <u>Metromedia</u> decision exemplifies the "very confused and conflicting history" of Section 413 of the zoning regulations. In that context, the <u>Metromedia</u> case was initiated and pursued under Subtitle Four of Title 3 of the

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Courts Article, Md. Code. A suit for declaratory judgment seeks "to settle and afford relief from uncertainty" rights under a County ordinance. The Court's declaration, moreover, "has the force and effect of a final judgment."

This Court, in <u>Metromedia</u>, relying upon venerable authority, <sup>9</sup> determined that the version of Section 413 set out in Petitioners' Exhibit C "became effective and controlling <u>law</u> by publication, dissemination, ratification and long acquiescence [Emphasis supplied]." This law, the <u>Metromedia</u> opinion continued, "was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code."

- § 3-402, Courts Article, M.D. Code; <u>Cochran v. Zoning Comm'r</u>, 41 Md. App. 437, 439-440 (1979); <u>Marriott Corp. v. Village Realty & Inv.</u>, 58 Md. App. 145, 472 A.2d 510, 513 (1984). See also Restatement, Judgments, 2d (1982), p. 334 (quoted <u>infra.</u>, p. 18-19).
- 7 See § 3-406, Courts Article, Md. Code.
- 8 Section 3-411, Courts Article, Md. Code.
- Pease v. Peck, 18 How. (59 U.S.) 595 (1855). See particularly, 18 How. (59 U.S.) at 596-7. For similar rulings, see Town of Pacific v. Seifert, 79 Mo. 210, 213 (1883); Wade v. Woodward, 145 So. 737 (Miss. 1933); Edel v. Filer Township, Mainstee County, 211 N.W.2d 547 (Mich. App. 1973); O.P. Corporation v. Village of North Palm Beach, 278 So.2d 593 (Fla 1973); City of Cresston v. Center Milk Products Co., 51 N.W. 2d 453, 465 (Iowa, 1952); Taylor v. Schlemmer, 183 S.W2d 913, 196 (Mo. 1944).

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Consequently, <u>Metromedia</u> declared that the County must apply the version of Section 413 contained in Petitioners' Exhibit C to "applications for special exception submitted by"

Petitioners. 10 Those versions include B.R. as a zone in which an outdoor advertising sign may be placed as a Special Exception.

In sum, <u>Metromedia</u> declared, as the applicable law, the versions of Section 413.3 which included B.R. as a zone in which, by Special Exception, an outdoor advertising sign could be erected. Further, <u>Metromedia</u> holds that the "applicable law" could not be amended except in accord with Section 22 of the County Code.

on amendments to zoning regulations are mandatory. Failure to give notice required by law, for example, is fatal to the jurisdiction to conduct a hearing. See Cassidy v. County Board of Appeals of Baltimore County, 218 Md. 418, 421-22 (1958). Indeed, even if initial notice is given, substantial change from what was announced is not proper. See Ransake v. Board of County Commissioners, 268 Md. 295 (1973); Von Lusch v. Board of County Commissioners, 268 Md. 445, 454 (1973). Without affording notice and hearing, there was no substantial

There is no doubt that the contract lessee is a division of Metromedia, Inc., the plaintiff in the Metromedia case.

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compliance with the "applicable law," <u>Crozier v. Co. Comm. Pr.</u>

<u>George's Co.</u>, 202 Md. 501, 506 (1953), and the publication in the current regulations of the repudiated Gold Book version of Section 413.3 is invalid.

## CONCLUSION

This identical issue, i.e., whether Section 413.3 includes B.R. as a zone in which, by special exception, an outdoor advertising sign could be erected has been litigated twice by the contract lessee. Initially, in Metromedia, Inc. v. Baltimore County, Eq. No. 103167, Judge Raine decided the answer in the affirmative. Thereafter, this identical issue came before the Honorable Joseph F. Murphy, Jr. in Circuit Court for Baltimore County Case No. 2/135/84CG435, docketed as In the Matter of the Application of Euclay Realty for a Special Exception. A copy of Judge Murphy's Order in that case is attached hereto as Exhibit B and incorporated by this reference. Judge Murphy agreed, and therefore, reversed the denial of the Petitions for Special Exception in a B.R. Zone by the County Board of Appeals.

Simply stated, <u>Metromedia</u> and <u>Euclay Realty</u> decided that the early disseminated mimeographed version of § 413.3 is the controlling law. That version, i.e. in the Black Book or the Blue Book included B.R. as a zone in which a Special Exception could be granted. The existence of <u>Metromedia</u> of the declaration of the law means that in order for Baltimore

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County to amend § 413.3 of the zoning law, the dictates of Section 22-21 and 22-22 of the County Code would have to be followed. They were ignored. Therefore, the version of Section 413.3 declared to be the law in Metromedia was not effectively amended in the publication of the new regulations. Without adhering to Section 22-21 and 22-22 after the Court's declaration of the law, the Black and Blue Book versions of Section 413.3. Which include B.R. as a zone in which an outdoor advertising structure may be located as a Special Exception must be applied.

The Petitioners implore the Zoning Commissioner to review the decisions rendered by the Circuit Court for Baltimore County, and, because the Petitioners have satisfied their burden of proof with respect to complying with the criteria articulated in Sections 413.3 and 502.1 of the B.C.Z.R., the Petitioners respectfully request that the Zoning Commissioner grant the Petitions for Special Exceptions.

Respectfully submitted,

Stuart R. Berger

WEINBERG AND GREEN
100 South Charles Street
Baltimore, Maryland 21201
(301) 332-8662

Attorneys for Petitioners

METAMEDIA, INC.

Pleintiff

V

BALTIMORE COUNTY, MARYLAND

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
EQUITY NO. 103167

et al Defendants

## MEMORANDUM OPINION

. . . . . . . . . . . . . . . . . .

In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted by the County Commissioners of Baltimore County on March 30, 1955. In 1957, and in 1963, the County republished this same version in the "Black? and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

In 1969, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a vault, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the County promulgated a new version of Section 413 in the Red and Gold Books without notice or

EXHIBIT A

IN THE MATTER OF THE APPLICATION OF EUCLIN REALTY
FOR SPECIAL EXCEPTION ETC.
APPEAL FROM THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
File No. 84-93-X

IN THE
CIRCUIT COURT

FOR
BALTIMORE COUNTY
AT LAW

Case 2/135/84CG435

ORDER

. . . . . . . . . . .

This Appeal having come on for a hearing in open Court on November 26, 1984, after the submission of the memoranda allowed by Rule Bl2, and the reasons for this Court's judgment having been set forth on the record during the proceedings on November 26, 1984, it is this 29 H, day of record 1984. ADJUDGED, ORDERED and DECREED that the Order of the County Board of Appeals dated July 11, 1984 is reversed and the Special Exception petitioned for by Appellants be and the same is hereby granted.

Approved as to form:

Peter Max Zimmerman
Deputy People's Counsel
Room 223. Court House
Towson, MD 21204

M. Albert Figinski)
Melnicove, Kaufman, Weiner &
Smouse, P.A.
36 S. Charles Stree\*
Baltimore, MD 21201

0848f/1

EXHIBIT B

-- mou 291984

IN RE: PETITION FOR SPECIAL \* BEFORE THE

EXCEPTION

NE/S Liberty Road, 312' \* ZONING COMMISSIONER

S of c/l Essex Road

(7028 Liberty Rd) \* OF BALTIMORE COUNTY

2nd Election District
2nd Councilmanic District \* CASE #88-487X

Richard Kim, Et Ux

Petitioners

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Petitioner requests approval of a Special Exception to use the herein described property for one (1) illuminated 12' x 25' outdoor advertising (sign) structure, as more particularly described on Petitioners' Exhibits 1 and 1A.

The Petitioner, Penn Advertising of Baltimore, Inc., appeared by their agent, Mr. Freedman, and were represented by Stuart R. Berger, Esquire. The Petitioner, Richard Kim, did not appear. There was one Protestant, Mrs. Judith Berger, representing Lochearn Improvement

The subject request is for an outdoor advertising sign as defined in Section 101 of the Baltimore County Zoning Regulations (B.C.Z.P.) in the B.R. zone on the subject site shown on Petitioner's Exhibits 1 and

The current 1987 edition of the B.C.Z.R. list the following regulations for outdoor advertising signs:

"413.3--Outdoor advertising signs as defined in Section 101 are allowed only in B.L., B.M. M.L., and M.H. zones as Special Exceptions, under the following conditions, as limited by Section 413.5: (B.C.Z.R., 1955)".

The regulati

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FXHIBIL

County Board of Appeals of Baltimore County

COUNTY OFFICE BUILDING, ROOM 315 111 W. CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 (301) 887-3180

April 13, 1989

Stuart R. Berger, Esquire 100 S. Charles Street Equitable Tower II Building Baltimore, Maryland 21201-3060

> Ro: Richard Kim, et ux Case No. 88-487-X

Dear Mr. Berger:

Enclosed please find a copy of the Opinion and Order issued this

date by the County Board of Appeals in the subject case.

Legal Secretary

Enclosure

cc: Mr. and Mrs. Richard Kim

√Mr. Freedman Ms. Judith Berger

P. David Fields

Pat Keller J. Robert Haines

Ann M. Nastarowicz

Docket Clerk Arnold Jablon, County Attorney

James E. Dyer

COUNTY BOARD OF APPEALS

IN THE MATTER OF THE APPLICATION OF RICHARD KIM, ET UX FOR PETITION FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE NORTHEAST SIDE \* OF LIBERTY ROAD, 312' SOUTH OF CENTERLINE OF ESSEX ROAD

TISING STRUCTURE

2ND ELECTION DISTRICT

2ND COUNCILMANIC DISTRICT

- BALTIMORE COUNTY (7028 LIBERTY ROAD), FOR ONE ILLUMINATED 12' x 25' ADVER-

Case No. 88-487-X

OPINION

This case comes before this Board on appeal from a decision of the

Zoning Commissioner denying the requested special exception.

\* \* \* \* \* \* \* \* \* \*

This case was set for Hearing at 1:00 p.m. on April 12, 1989. As indicated on the record in this case, at 1:27 p.m. on April 12, 1989, the Board dismissed the appeal for lack of appearance since neither Petitioner nor his attorney was present at that time. As furtherance of the decision rendered above, the record will indicate that Petitioner's attorney contacted the Board Chairman on April 11, 1989 and indicated that he did not intend to

ORDER

pursue the Petition and wished it withdrawn.

It is therefore this 13th day of April , 1989 by the County Board of Appeals of Baltimore County ORDERED that the Zoning Commissioner's Order denying the requested special exception be AFFIRMED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

> COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William T. Hackett, Chairman

RICHARD KIM, et ux \* IN THE Plaintiff/Appellant \* CIRCUIT COURT

BALTIMORE COUNTY BOARD OF BALTIMORE COUNTY

APPEALS Defendant/Appellee County Board of Appeals Case No. 88-487-X

\* CASE NO. 89CG1672 \* \* \* \* \* \* \* \* \* \* \* \* \*

This Appeal naving come to this Court for a hearing on October 3, 1939, after the submission of memoranda allowed by Maryland Rule B12, it is this of day of October, 1989,

ADJUDGED, ORDERED and DECREED that the Order of the County Board of Appeals for Baltimore County dated April 13, 1989 is Reversed. The appeal pending before the County Board of Appeals of Baltimore County (CBA) was dismissed prior to the April 12, 1989 hearing date. Therefore, the CBA was divested of jurisdiction to rule on the decision of the Zoning Commissioner. The order of the CBA in affirming the decision of the Zoning Commissioner was in error.

William R. Buchanan, Sr.

46 MD, COMM'N ON HUMAN REL, v. B.G. & E. CO.

MARYLAND COMMISSION ON HUMAN RELATIONS v. BALTIMORE GAS AND ELECTRIC COMPANY

[No. 66, September Term, 1982.] Decided April 26, 1983.

ADMINISTRATIVE LAW - Exhaustion Of Remedies - Statutorile Prescribed Administrative And Judicial Remedies Must Ordinarily Be Pursued And Exhausted.

Administrative Law - Exhaustion Of Romedies - To Exhau ( Administrative Remedies, Ordinarily A Party Must Pursue The Prescribed Administrative Procedure To Its Conclusion And Await Its Final Outcome - Generally A Party Can Resort To A Court Only When There Is A Final Order In The Administrative Proceeding - Maryland Code (1957, 1982) Repl. Vol.) Art. 41, 8–255 (a), Administrative Procedure Act. p. (s)

Appeal. - Final Judgment - Appealability - An Order Of Court I-Final And Hence Appealable When It Determines Or Concludes The Right. Of The Parties Or Denies Them Means Of Further Prosecuting Or Defending Their Rights And Interests In The Subject Matter Of The Proceedings - A Trial Court's Order Remanding A Case Fo An Administrative Agency Constitutes A Final Order For Purpose Of Further Judicial Review.

Administrative Law = Finality Of Decision - An Administrative Agency's Action Is Final If It Determines The Rights Of The Parties And Leaves Nothing Further For Agency To Do Where an order of the appeal heard of the Human Relations Commission remanded the case to a 'ommission hearing examiner to decide whether appellee's retusal to have the wife of an employee was unlawful discrimination, the Court held that this order was not a final decision of the administrative agency entitling the appellee to immediate judicial review

Appeal from the Baltimore City Court (KARWACKI and THOMAS, JJ.), pursuant to certiorari to the Court of Special

From an order by the Maryland Commission on Human Relations remanding a discrimination complaint to a Commission hearing examiner for a further hearing, the MD. COMM'N ON HUMAN REL. v. B.G. & E. CO. 47

Opinion of the Court.

Baltimore Gas and Electric Company appealed to the Baltimore City Court (now Circuit Court for Baltimore City). From an order of the court remanding the case to the Commission, the Commission appealed to the Court of Special Appeals. The Court granted certiorari prior to a decision by the Court of Special Appeals.

Judgment of the Baltimore City Court (now the Circuit Court for Baltimore City) vacated. Case remanded to the Circuit Court for Baltimore City with instructions to dismiss. Costs to be paid by respondent. The cause was argued before MURPHY, C. J., and SMITH,

ELDEBOGE, COLE, DAVIDSON, RODOWSKY and COUCH, JJ.

Risselle Rosenthal Fleisher, General Counsel, for appellant.

Stanley Mazaroff, with whom were Venable, Baetjer & Howard, Michael D. Rind and James A. Biddison, Jr., on the brief, for appellee.

DAVIDSON, J., delivered the opinion of the Court.

The primary question this case presents concerns the doctrine of exhaustion of statutorily prescribed administrative and judicial remedies. More particularly, the question is whether an administrative agency appeal board's order remanding a case to a hearing examiner for further proceedings constitutes a final decision that entitles a party to immediate judicial review.

On 22 November 1978, the petitioner, Maryland Commission on Human Relations (Commission), filed a complaint, see Md. Code (1957, 1979 Repl.Vol.), Art. 49B, § 9 (b), against the respondent, Baltimore Gas and Electric Company (B G & E), alleging that B G & E's policy of refusing to hire the spouse of an employee constituted discrimination based upon marital status. BG & E denied

1. Md. Code (1957, 1979 Repl.Vol.), Art. 49B, § 16 (a) (1) provides in

TYRIE c. BALTIMORE COUNTY

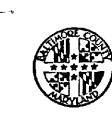
579, supra. In the latter case, the law was said to be, on the strength of some twenty cited cases, that a State may increase or diminish the rate of compensation of a common or of a contract carrier against the wills both of the carrier and the person who is obligated to pay him, regardless of pre-existing contracts between them. We do not decide that the Legislature could not constitutionally provide for regulation of the rates of contract carriers of flammables if, in its judgment, this was an appropriate means of controlling the use of the roads and of regulating competition affecting common carriers. We decide only that the Legislature has not yet granted the Commission that power. The conclusions we have reached make it unnecessary that we pass on any of the other contentions of the parties.

> Decree reversed and case remanded for further proceedings not inconsistent with this opinion, appellees to pay the costs.

TYRIE ET AL. v. BALTIMORE COUNTY ET AL. [No. 82, September Term, 1957.]

Zoning-Change of Use-Denial of Right to Seek Again for Stated Period of Time. An owner of property may be denied entirely, for the period of time stated in a zoning ordinance, the right to seek again a special permit for a change of use.

STATUTES-Legislative Intent-Considering Meaning and Efject of Words in Light of Setting, Purposes of Enactment, Ends to Be Accomplished and Consequences. In determining legislative intent in doubtful cases, the courts must consider not only the literal or usual meanings of the words used, but their meaning and effect in the light of the setting, the purposes of the enactment, the ends to be accomplished and the consequences that may result from one meaning rather than from another.



Baltimore County, Maryland PEOPLE'S COUNSEL

ROOM 304, COUNTY OFFICE BUILDING 111 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND 21204 887**=95-2188** 

PHYLLIS COLE FRIEDMAN People's Counsel

PETER MAX ZIMMERMAN Deputy People's Counsel

August 24, 1990

The Honorable J. Robert Haines Zoning Commissioner of Baltimore County County Office Building Towson, Maryland 21204

RE: Richard Kim, et al., Petitioners Case No. 90-505-X

Dear Commissioner Haines:

I am in receipt of the letter memorandum filed by Stuart R. Berger dated August 10, 1990 and feel compelled to respond. The thrust of Mr. Berger's legal argument relies upon a case decided in 1957 based upon language in Section 500.12 that was significantly changed by Council Bill No. 25-78, copy enclosed.

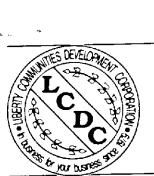
In light of these legislative changes, the  $\underline{\text{Tyrie}}$  case is no longer good law and Mr. Berger's response is inapposite.

People's Counsel for Baltimore County

Enclosure

cc: Stuart R. Berger, Esquire

ZOWING OFFICE



LIBERTY COMMUNITIES DEVELOPMENT CORPORATION, INC. 3820 Fernside Road • Randallstown, MD 21133 • (301) 655-7766

June 28, 1990

Ms. Ann Nastarowicz Deputy Zoning Commissioner Baltimore County County Office Bldg. 111 West Chesapeake Ave. Towson, MD 21204

Re: 7028 Liberty Road Citation #90-396, and Case #90-505-X

Dear Ms. Nastarowicz:

As you will recall LCDC is a local business organization working throughout the length of the Liberty Road revitalization Area. We consist of over 200 business members and operate under contract with the County's Economic Development Commission. We are seeking your assistance and guidance on solving a signage and zoning problem at the above address.

Earlier this year the owner, Mr. Kim, received a citation (90-396) for improper signage. It is my understanding that the complaint was related to advertising signs which were mounted on the side of the building. This store, unlike many other liquor stores, lacks display windows and as a result he displayed his advertising of "specials" on the side brick wall of the building. In any event, this signage has been totally removed. Additionally, Mr. Kim has verbally agreed with our office to remove two other obsolete free standing signs in the front of the building. Mr. Kim has also agreed that any new, replacement signage for advertising will be in accordance with zoning regulations and will have the necessary permits. Our office is willing to work with the store on the design and permits of these signs.

In June of 1988 Penn Advertising worked with this store and attempted to gain a Special Exception (88-487-X) for an illuminated 12 ft. X 25 ft. sign. We considered this to be a bill board and we opposed the petition which was delayed and eventually withdrawn. Penn Advertising, under the property owner's name is again seeking a Special Exception (90-505-X) for a similar

I have recently met with Mr. Kim and explained that LCDC is in opposition to the Special Exception and would prefer if the petition were withdrawn, or if that is not possible, that he understand the community's opposition and reconsider his arrangement with Penn Advertising.

It is our hope to consolidate these various issues into one item and thereby lessen and improve the signage at this address. We would like to respectfully propose that we continue to work with Mr. Kim on removing the improper signage and on designing and gaining permits for any replacement signage. Hopefully, this action would eliminate the need for further prosecution and the imposition of fines. At the same time we will attempt to eliminate the proposed billboard in the most expeditious manner.

We appreciate your consideration on this matter.

Sincerely,

Jim Janas Director, LCDC

cc: Richard Kim

WEINBERG AND GREEN

ATTORNEYS AT LAW

100 SOUTH CHARLES STREET BALTIMORE, MARYLAND 21201-2773 (30) 332-8600 WASHINGTON AREA 470-7400

FACSIMILES

(301) 332-8863

(301) 332-8862

14 WEST PATRICK STREET FREDERICK, MARYLAND 21701-5512 (301) 695-9200 FILE NUMBER

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(301) 332-8662August 10, 1990

The Honorable J. Robert Haines Zoning Commissioner of Baltimore County 111 West Chesapeake Avenue Room 109

10480 LITTLE PATUKENT PARKWAY

COLUMBIA, MARYLAND 21044-3506

(301) 740-8500

WRITER'S DIRECT DIAL NUMBER

Towson, Maryland 21204 Re: In the matter of Richard Kim, et al. for a Petition for Special Exception 7028 Liberty Road Case No. 90-505-X

Dear Zoning Commissioner Haines:

At the conclusion of the hearing of the above-referenced petition for special exception, you requested that Ms. Friedman and I submit to you any authority we could locate pertaining to the Zoning Commissioner's jurisdiction to entertain the above-captioned petition for special exception.

Pursuant to your request, I am submitting this letter to you in lieu of filing a memorandum of law. At the hearing on August 2, 1990, I supplied you with a memorandum on behalf of the petitioner which contains a summary of the procedural history of this case. See pages 1-4 of petitioner's memorandum. In sum, the petitioner filed its original petition for a special exception on March 30, 1988. On October 10, 1988, the original petition was denied. An appeal was noted with the County Board of Appeals, but the appeal was dismissed prior to the hearing before the Board of Appeals. Thereafter, the Board -- without jurisdiction -affirmed the denial of the petition for special exception. On appeal on the sole issue of the jurisdiction of the Board, the Circuit Court for Baltimore County reversed the Board of Appeals, and expressly held that:

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The appeal pending before the County Board of Appeals of Baltimore County (CBA) was dismissed prior to the April 12, 1989 hearing date. Therefore, the CBA was divested of jurisdiction to rule on the decision of the Zoning Commissioner. The order of the CBA in affirming the decision of the Zoning Commissioner was in error.

Thereafter, a subsequent petition for special exception was filed by the petitioner. At the hearing on this petition, Ms. Friedman, on behalf of People's Counsel, argued that the Zoning Commissioner did not have the jurisdiction to entertain the petition because 18 months had not expired since the date of the Circuit Court Opinion. Counsel for the petitioner and contract lessee argued that the 18 month requirement prescribed by Section 500.12 of the Baltimore County Zoning Regulations starts from the date of the Zoning Commissioner's denial of the petition for special exception.

Pursuant to the Zoning Commissioner's request, we researched the history of Section 500.12 in an effort to locate case law which either supports or contradicts our contention that the Zoning Commissioner has jurisdiction to entertain the petition at issue. Under cover of this letter, I am enclosing a copy of Tyrie v. Baltimore County, 215 Md. 135 (1957). Tyrie specifically addresses the application of Section 500.12 of the Baltimore County Zoning Regulations to a case very similar to the petition at bar. In Tyrie, the owners of a tract of land filed a petition with the Zoning Commissioner for a reclassification of the zone in which the property was situated. The petition was denied and the landowners subsequently filed an appeal with the Zoning Board of Appeals. Thereafter, the Court of Appeals, per Judge Hall Hammond, Feld that:

> Although an appeal was noted, it was withdrawn before hearing, and the order of the Zoning Commissioner became final as of the date of its <u>issuance.</u>

> > Id. at 138 [emphasis added].

Thus, the Tyrie Court held that because the appeal was voluntarily dismissed, the 18 month waiting period contained in Section 500.12 of the Baltimore County Zoning Regulations began running when the Zoning Commissioner issued his denial.

The appellee in Tyrie later acquired the land in question and applied to the Zoning Commissioner for a special exception. The appellee's request was granted before the end of the 18 month

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waiting period. Because the Court ruled that that application for a special exception was legally the same as a petition for reclassification, the Court concluded that the Zoning Commissioner's action violated § 500.12. In rejecting the Zoning Commissioner's actions, the Court held that the Zoning Commissioner's "power is only such as the legislative body has given him and under [§ 500.12] he lacked jurisdiction at the time he acted, so that his act was a nullity." Id. at 141.

The Tyrie Court clearly held that a decision issued notwithstanding a lack of jurisdiction will be considered a legal nullity. Therefore, because the judgment of the County Board of Appeals in the instant case was issued despite its lack of jurisdiction, the Board's decision and the subsequent Circuit Court's reversal on the jurisdictional issue must be regarded a nullity as a matter of law. Accordingly, as explicated in Tyrie, it is clear that the 18 month waiting period began running on October 10, 1988, i.e. the date when the Zoning Commissioner issued his denial of the original petition for special exception.

In summary, both Tyrie and the instant case involve an appeal which was noted but later withdrawn. As such, "[a]lthough an appeal was noted, it was withdrawn before hearing, and the order of the Zoning Commissioner became final as of the date of its issuance." See Tyrie v. Baltimore County, supra, 215 Md. at 138. Because the County Board of Appeals' decision was nullified due to its lack of jurisdiction to entertain the appeal, the 18 month waiting period required under § 500.12 of the zoning regulations begins to run from the date of the Zoning Commissioner's denial, i.e. on October 10, 1988.

Thank you for your consideration.

BGY76:5988G/0366/raj

cc: Phyllis Cole Friedman, Esq. People's Counsel for Baltimore County

90-505X PLEASE PRINT CLEARLY PROTESTANT(S) SIGN-IN SHEET LCDC 3820 Fernsibe Rd Romdallstown, MD 21133 JUDITH BERGER -LRCC + LOCHEARN & 3801 LOCHEARN DR TARR. ASSID BALTO MD 21207

